

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

Kenia Jackeline MERLOS,

Plaintiff,

v.

KRISTI NOEM, Secretary of U.S. Department  
of Homeland Security, in her official  
Capacity, U.S. Department of Homeland  
Security; RODNEY SCOTT; Commissioner  
of U.S. Customs and Border Patrol; U.S.  
Customs and Border Patrol; Erik JOHNSON,  
ICE/ERO Seattle Field Office Director;  
IMMIGRATION AND CUSTOMS  
ENFORCEMENT/ENFORCEMENT AND  
REMOVAL OPERATIONS,

Defendants.

NO.

**MOTION FOR TEMPORARY  
RESTRAINING ORDER**

**I. INTRODUCTION AND RELIEF REQUESTED**

Kenia Jackeline MERLOS asks only for U.S. Customs and Border Protection to respect her constitutional right to consult with an attorney under the First and Fifth Amendments. This simple request has been repeatedly denied and, as a result, Kenia Jackeline MERLOS has been

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1 unable to consult with her attorney. **Her removal is apparently imminent given the posture of**  
2 **her case and without access to her attorney, she has no way to access any relief that might be**  
3 **available to her. Counsel has reason to believe removal is being executed this evening, July**  
4 **13, 2025.** For this reason, we request that this Court order Defendants not to remove Kenia  
5 Jackeline MERLOS from the Western District of Washington pending an opportunity to consult  
6 with counsel.

## 7 II. FACTS

8 On June 28, 2025, Plaintiff was detained at the Canadian Border with her four U.S. Citizen  
9 children. Since that time she has been detained in CBP Custody.

10 Attorneys of Gonzales, Gonzales & Gonaes were hired to represent Kenia Jackeline  
11 MERLOS, along with her husband, children and parents on July 5, 2025. Kenia Jackeline  
12 MERLOS has only been deprived of her right to counsel because of CBP custody. Her mother and  
13 husband have been able to access counsel.

14 An attorney employed by Gonazles, Gonzales & Gonzales, Jill Nedved, made several calls  
15 on July 7, 2025 to Customs and Border offices at the Blaine Station, Blaine Port of Entry and the  
16 CBP Sector for Public Affairs. An officer at the Blain Station supervisor line took down her  
17 contact information and client information and was told someone would get back to her. She did  
18 not receive a call back. On July 8, 2025, Ms. Nedved made calls again to CBP locations and was  
19 informed no information could be provided via telephone and was told to contact CBP via email  
20 at [blwintelintake@cbp.dhs.gov](mailto:blwintelintake@cbp.dhs.gov). Ms. Nedved provided a G-28 Notice of Attorney representation  
21 to that email on July 8, 2025 and again on July 9, 2025.

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1 Gonzales Gonzales & Gonzales received contact from U.S Congresswoman Maxine  
2 Dexter's office on Wednesday July 9, 2025, whose office offered assistance in locating Kenia  
3 Jackeline MERLOS at the request for assistance by Ms. MERLOS' family. On July 10, 2025, Ms.  
4 Nedved was informed through Congresswoman Dexter's office Ms. MELOS was located at the  
5 Seattle Field Office for ICE/ERO in Tukwila, Washington. Ms. Nedved went to the location and  
6 was informed Kenia Jackeline MERLOS was not there. Ms. Nedved spoke to CBP agents on July  
7 10, 2025, at the King County Regional Airport who informed her to contact the previously  
8 provided email.

9 Our office was then informed Kenia Jackeline MERLOS was in CBP custody in  
10 Bellingham. Our office was later informed Kenia Jackeline MERLOS and her children were at the  
11 Ferndale, Washington CBP location. Ms. Nedved drove to the CBP location at 1431 Sunset Ave,  
12 Ferndale, WA 98248, on Friday, July 11, 2025, to speak to Ms. MERLOS. Kenia Jackeline  
13 MERLOS was purportedly not at that location and was in route to Seattle, Washington. Ms.  
14 Nedved was denied access to speak to Ms. MERLOS should she return and was informed by CBP  
15 officials that Ms. MERLOS had requested a voluntary return and had no right to counsel. Ms.  
16 Nedved was provided no documentation by CBP and was denied access to the purported Voluntary  
17 Return document.

18 Kenia Jackeline MERLOS has a pending U- Visa and was granted Deferred Action based  
19 on her pending U- Visa application. Her deferred status. Ms. MERLOS was granted work  
20 authorization by DHS through USCIS on January 15, 2025 until January 14, 2029. Kenia Jackeline  
21 MERLOS has purportedly accepted a voluntary return but was not provided with her right to see  
22 an immigration judge. Ms. MERLOS has rights to additional applications for relief in front of an

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1 immigration judge given her length of residence in the United States and qualifying relatives of  
2 her U.S. Citizen Children, including the right to file for Cancellation of Removal. The Client has  
3 been given no opportunity to understand her rights or make guidance regarding any decision.

4 On July 8, 2025, Kenia Jackeline MERLOS contacted long-time family friend, Mimi  
5 Lettunich, via text message saying “Mimi I need an attorney” and “They wan[t] [sic] to send us to  
6 Honduras.” On July 10, 2025, Kenia Jackeline MERLOS contacted her pastor, Josue Guerra,  
7 around 6:45am and informed him she would not sign any paperwork and had not signed any  
8 paperwork that she had been given.

9 Undersigned counsel has specific concerns as to whether the purported voluntary return  
10 was signed and whether it was in fact voluntary. Kenia Jackeline MERLOS should have right to  
11 be granted access to counsel given these circumstances. Kenia Jackeline MERLOS’ pending U-  
12 Visa and attached waiver may be affected by her decision, yet she may have been confused. CBP  
13 informed Ms. Nedved it was their understanding her application would not be affected. It is  
14 unclear if this was told to Kenia Jackeline MERLOS directly. Any waiver under these  
15 circumstances would be affected by the interaction with CBP, and would need to be amended.

16 Kenia Jackeline MERLOS was only deprived of her right to counsel because of CBP  
17 custody. Both Kenia Jackeline MERLOS’ mother and husband have been granted access to  
18 counsel. Kenia Jackeline MERLOS’ husband and mother have had no contact with her since she  
19 was detained by CBP.

### 20 **III. ARGUMENT**

Kenia Jackeline MERLOS requests a Temporary Restraining Order enjoining Defendants from removing her from the Western District of Washington until she has had the opportunity to consult with an attorney.

**A. Standard for Issuance of Temporary Restraining Order**

The standard for issuing a temporary restraining order is identical to the standard for a preliminary injunction. *Stuhlbarg Int’l Sales Co., Inc. v. John D. Brush & Co., Inc.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001); *Lockheed Missile & Space Co., Inc. v. Hughes Aircraft Co.*, 887 F. Supp. 1320, 1323 (N.D. Cal. 1995). To prevail on a motion for a preliminary injunction, the Plaintiff must establish: (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm; (3) that the balance of equities tip in his favor; and (4) that an injunction is in the public interest. *Winter v. Natural Resources Defense Council, Inc.*, 55 U.S. 7, 20 (2008).

The Ninth Circuit employs a “sliding scale” approach to preliminary injunctions, “so that a stronger showing of one element may offset a weaker showing of another.” *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). Within this “sliding scale” approach lays the “serious question” test: “a preliminary injunction could issue where the likelihood of success is such that ‘serious questions going to the merits were raised and the balance of hardships tips sharply in [plaintiff’s] favor.’” *Id.* at 1131 (citation omitted). To succeed under the “serious question” test, the plaintiff must show that he is likely to suffer irreparable harm and an injunction is in the public’s interest. *Id.* at 1132.

**B. Kenia Jackeline MERLOS is Likely to Succeed on the Merits**

Kenia Jackeline MERLOS is likely to succeed on the merits of her First and Fifth Amendment claims.

**1. The Government’s Denial of Access to Counsel Violates the Detained [CLIENT]’s First Amendment Rights.**

The wholesale restriction of attorney–client communication violates the First Amendment rights of the immigrant detainees. The First Amendment guarantees all persons—even prisoners—freedom of speech. *See Pell v. Procunier*, 417 U.S. 817, 822 (1974). Detainees have a First Amendment right to “communicate with persons outside prison walls.” *Valdez v. Rosenbaum*, 302 F.3d 1039, 1048 (9th Cir. 2002). This includes immigration detainees. *Torres v. U.S. Dep’t of Homeland Sec.*, 411 F. Supp. 3d 1036, 1067 (C.D. Cal. 2019).

When a detainee has a right to counsel, the government cannot impose conditions of confinement that unnecessarily burden that right. *Id.* (holding that allegations of “overly-restrictive” policies hindering immigrant detainees’ ability to “hire and consult with an attorney” sufficiently stated a First Amendment claim to “communicate with the outside world”). Such a restriction is subject to intermediate scrutiny and must be “justified without reference to [content], ... [and] narrowly tailored to serve a significant governmental interest....”. *Id.*

Here, there is simply no justification for the government to restrict access to an attorney for Kenia Jackeline MERLOS, much less a compelling one. CBP must have a process for allowing access to counsel because access to counsel for some immigration detainees is clearly required. There is nothing about Kenia Jackeline MERLOS’s status that significantly increases the administrative burden on CBP.

**2. The Government’s Ban on Access to Counsel Violates the Fifth Amendment Substantive Due Process Right Against Punishment for Civil Immigrant Detainees.**

The government’s total denial of attorney access also violates the detainees’ Fifth Amendment due process right to be free from punishment in civil detention. Those held in

immigration detention therefore have a due process right not to be subjected to any “condition, practice, or policy [that] constitutes punishment.” *Block v. Rutherford*, 468 U.S. 576, 583 (1984). Immigrants in civil detention have at least the same rights against punitive conditions of confinement as those detained pending a criminal trial, and that includes the right not to have their access to counsel eliminated. *Youngberg v. Romero*, 457 U.S. 307, 315-16 (1982); *Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004). Such conditions must clearly include the right to access counsel. CBP’s refusal constitutes a denial of this right.

**3. The Government’s Denial of Access to Counsel Violates the Immigrant Detainees’ Statutory and Regulatory Rights to Counsel.**

The Immigration and Nationality Act (“INA”) and its implementing regulations enshrines the right to counsel of choice. See 8 U.S.C. §§ 1229a(b)(4)(A), 1362; 8 C.F.R. §§ 1003.16(b), 1240.3. This statutory right is not confined to a noncitizen’s formal “removal proceedings;” instead, “[t]he INA gives non-citizens the right to be represented by an attorney in most [aspects of] immigration proceedings as long as the government does not have to bear the expense.” *Zuniga v. Barr*, 946 F.3d 464, 469 (9th Cir. 2019) (holding that individuals have a statutory right to counsel in reasonable fear proceedings).

The right to counsel clearly protects more than the retainer on paper; the “right [to counsel] must be respected in substance as well as in name.” *Baires v. INS*, 856 F.2d 89, 91 n.2 (9th Cir. 1988). To mean anything, the right to counsel must protect certain rights and procedures to fully access and effectuate that right, including advice about options to address legal challenges, including potential deportation.

1 Here, there is not just an impediment but a total ban. For the same reasons discussed above,  
2 there is no justification for the government to completely deny the immigration detainees their  
3 statutory and regulatory right to counsel.

4 **C. Kenia Jackeline MERLOS's Deportation with Consultation with Counsel will**  
5 **Cause Irreparable Harm**

6 Kenia Jackeline MERLOS will suffer irreparable harm if a temporary restraining order is  
7 not granted. Since her detention, Kenia Jackeline MERLOS has been unable to consult an attorney  
8 because she could be deported having never had the opportunity to consult with the attorney hired  
9 to help her with her immigration status regarding her options for pursuing legal status in the United  
10 States. This is an irreparable harm that requires immediate redress.

11 **D. The Balance of the Hardships and the Public Interest Both Support Issuance of a**  
12 **Temporary Restraining Order.**

13 When considering whether a temporary restraining order should issue, "courts must  
14 balance the competing claims of injury and must consider the effect on each party of the granting  
15 or withholding of the requested relief." *Winter*, 55 U.S. at 24. Here, there is simply no question  
16 that the possibility of deportation without first having access to an attorney far outweighs any  
17 administrative burden to the government in allowing Kenia Jackeline MERLOS access to her  
18 attorney.

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**IV. CONCLUSION**

For the above reasons, Kenia Jackeline MERLOS should be granted a Temporary Restraining Order enjoining Defendants from removing her from the Western District of Washington without first giving her the opportunity to consult with counsel.

RESPECTFULLY SUBMITTED this 13<sup>th</sup> of July, 2025.

Respectfully submitted,  
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